

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.S.SATHEESACHANDRAN

MONDAY, THE 8TH MARCH 2010 / 17TH PHALGUNA 1931

CRP.No. 161 of 2006()

OP.5/1997 of SUB COURT, NEDUMANGAD
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REVN. PETITIONER(S): COUNTER PETITIONER/DEFENDANT

KRISHNA PANICKER, SREEDHARA PANICKER,
SREEKRISHNA PLANTATION BUILDING,
MANNOORKARA MURI, MANNOORKARA VILLAGE.

BY ADV. SRI.M.RAJASEKHARAN NAYAR
SRI.JOHN K.JOSEPH(SAJAN)
SMT.K.N.RAJANI
SMT.MANJUSHA MOHANDAS

RESPONDENT(S): PETITIONER/PLAINTIFF

GOURI AMMA RAJAMMA,
VALIYAVILA MEKKUMKARA PUTHEN VEEDU,
MANNOORKARA MURI, MANNOORKARA VILLAGE,
NEDUMANGAD TALUK.

ADV. SRI.V.K.PRAVEEN FOR R1

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ALONG WITH C.R.P No. 552/08 ON 08/03/2010, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

C.R.P.NO.161 OF 2006

DATED THIS THE 24th DAY OF AUGUST, 2006

ORDER

The respondent/defendant in OP(Indigent) No.5/97 on the file of Subordinate Judge's Court, Nedumangad has filed this revision petition challenging an order passed by the Court below, permitting the respondent to file the suit as an indigent person. The respondent filed suit for declaration of title and recovery of possession of plaint D schedule property or in the alternative for a decree allowing her to recover Rs.3,12,500/- from the petitioner. According to the respondent, she is an indigent person, who is not having any source of income or means to pay the Court fee and filed the suit as O.P.(Indigent). The respondent resisted the Original Petition contending that the suit was barred by res judicata in view of the judgment and decree passed in OS 190/1972 and OS 322/1988 of the Munsiff Court, Nedumangad. It was also contended that the claim is barred under Order 2 Rule 2 C.P.C. It was also contended that the petitioner has got means to pay the

Court fee.

2. The learned Sub Judge as per order dt.3.12.97 allowed the application. That order was set aside by this Court in CRP 203/98. The order was set aside and the case was remanded to the Court below for reconsideration. The Sub Court again allowed the application. That order was also set aside by this Court in CRP 192/04. The case was remanded to the Sub Court for fresh disposal. Thereafter, no further evidence was adduced. But Exts.B1 to B3 proved. The Court below allowed the application . Challenging that decision this Civil Revision Petition is filed.

3. The learned Counsel appearing for the petitioner has argued that the subject matter in the present suit, O.S.190/1972 and O.S. 322/1988 are the same. It is submitted that the relief sought for in the former suit was also to set aside the same sale deed No.2224 of 1965 and as such it ought to have been found that it is barred by res judicata. It is also argued that the parties in the former suits and the present suit are the same and they are litigating under the same title. It is argued that though the petitioner raised a contention that the suit is barred under order 2 Rule 2 CPC. That contention was not considered by the Court

below. It is also contended that the respondent has sufficient means to pay the Court fee.

4. The Court below after perusing B1 to B2, took a view that it is not clear as to whether the property involved in the present suit and the properties involved in the former suit are one and the same. According to the Court below, in the present suit, there are 4 items of properties. But in the former suit there was only one item of property. The Court below has not considered whether the subject matter of the former suit and present suit are one and the same. The Court below has also not considered whether the parties are litigating under the same title. The Court below has also not considered as to whether the reliefs sought for in the present suit is barred in view of the provisions contained in Order 11 Rule 2 of C.P.C. So, I have no other option but to set aside the order passed by the Court below and remand the matter for fresh consideration in accordance with law. Since I am remanding the case the finding of the Court below that the petitioner has no means to pay the Court fee also is set aside.

In the result, the CRP is allowed. The order impugned is set aside. The matter is remanded to the Court below for fresh consideration.

I.A.728/06 will stand dismissed.

K. PADMANABHAN NAIR, JUDGE

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